



W.P. No. 26141 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P. Nos. 26141 to 26143, 25933 to 25935, 26144,
26158, 26693 & 27883 of 2017 & 775 & 850 of 2018
and

W.M.P. Nos. 27781 to 27784, 27492 to 27495, 27795, 28421, 29906 &
29907 of 2017 and 943, 944, 1017, 1018, 17091 to 17098, 18526 to
18528 of 2018

W.P.No.26141 of 2017

M/s. Pothys – HTSC No.2414
Rep. by its Partner
Mr. S.Ramesh

... Petitioner

Versus

- 1 The Chairman and Managing Director,
Tamil Nadu Electricity Generation
& Distribution Corporation
No.144, Anna Salai,
Chennai 600 002.
- 2 The Superintending Engineer
(Appellate Authority)
Operation Circle/North/Chennai,
Tamil Nadu Transmission Corporation Ltd.,
230, K V Korattur SS Campus,
Chennai-80.



W.P. No. 26141 of 2017

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3 The Assistant Executive Engineer,
Operation & Maintenance/T.Nagar/South,
CEDC/Central, TANGEDCO,
No.57, Bazullah Road, T.Nagar,
Chennai-17.

... Respondents

PRAYER in W.P.No.26141 of 2017: Writ Petition filed under Art. 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the 2nd respondent in Appeal No.1 of 2017 dated 11.9.2017 in confirming the order of the final assessment of the 3rd respondent levying compensation charges under Section 126(5) & (6) of the Electricity Act 2003 dated 03.7.2017 as the same is arbitrary and violative of Section 126 of the Electricity Act 2003 and Regulation 19 of the Electricity supply code 2004 by quashing the same and consequently forbear the respondents from initiating any action to recover the said amount and to disconnect the HT Service connection No.2414 from the petition premises at No.15 Nageswara Rao & N.59 Usman Road Chennai 600 017 to the petitioner.



W.P. No. 26141 of 2017

WEB COPY

For Petitioner in W.P.
Nos. 26141 & 26143 &
26144 of 2017

:- Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.R.Mohan

For Respondents in W.P.
Nos. 26141 & 26143 &
26144 of 2017

: Mr.J.Ravindran,
Addl. Advocate General
assisted by
Mr. L.Jai Venkatesh,
Standing Counsel for
R1 to R3

For Petitioner in W.P.
Nos. 26142, 25933 to 25935,
26158, 26693, 27883 of 2017 :-

Mr.R.Mohan

For Respondents in W.P.
No. 26142, 25933 to 25935
26158, 26693, 27883
of 2017

: Mr.J.Ravindran,
Addl. Advocate General
assisted by
Mr. L.Jai Venkatesh,
Standing Counsel for
R1 to R3

For Petitioner in W.P.
No. 775 of 2018

:- Mr.G.Karthikeyan



W.P. No. 26141 of 2017

WEB COPY

For Respondents in W.P.
No. 775 of 2018

: Mr.J.Ravindran,
Addl. Advocate General
assisted by
Mr. L.Jai Venkatesh,
Standing Counsel for
R1 to R3

For Petitioner in W.P.
No. 850 of 2018

:- Mr.A.Saravanan

For Respondents in W.P.
No. 850 of 2018

: Mr.J.Ravindran,
Addl. Advocate General
assisted by
Mr. L.Jai Venkatesh,
Standing Counsel for
R1 to R3

- - - - -

COMMON ORDER

All the Writ Petitions have been filed challenging the respective demand notice issued by the respondents on the ground that there is unauthorised use of electricity by the Writ Petitioners.



W.P. No. 26141 of 2017

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2. The demand notice has been issued on the ground that the energy has been used in other extended areas, which have been constructed unauthorisedly later, wherein supply has been given only to the premises approved at the relevant point of time. The sum and substance of demand notices which have been challenged in all these Writ Petitions relates to a short question as to whether the use of electricity in the same building for the unauthorised portion would amount to unauthorised use of electricity.

3. Since the issue involved in all these writ petitions are one and same and with the consent of the learned counsels on either side all the writ petitions were heard together and disposed of by means of this common order.

4. The Writ Petition in W.P.No.25933 of 2017 has been filed challenging the demand notice and according to the Writ Petitioner, the



W.P. No. 26141 of 2017

WEB COPY

violation is only in the terrace area. The Writ Petition in W.P.No.26143 of 2017 relates to violation in respect of 5th to 9th floor and also in the terrace area. The Writ Petition in W.P. No. 26141 of 2017 relates to the violation in terrace area. The Writ Petition in W.P.No. 26158 of 2017 relates to violation in terrace area. The Writ Petition in W.P.No. 25935 of 2015 relates to violation in respect of 3rd floor to 6th floor. The Writ Petition in W.P. No. 25934 of 2017 relates to violation in 3rd and 4th floors. The Writ Petition in W.P. No. 26142 of 2017 relates to violation in respect of 1st and 2nd floor. The Writ Petition in W.P.No.26144 of 2017 relates to violation in respect of 5th and 6th floors. The Writ Petition in W.P.No. 27883 of 2017 relates to violation in respect of 12th floor and terrace. The Writ Petition in W.P.No.26693 of 2017 relates to violation in respect of 3rd floor (canteen).

5. As electricity has been originally supplied to the approved building, according to the respondent, the electricity has been utilised for unapproved areas also by the writ petitioners. Therefore, such acts of the writ petitioners comes within the purview of Section 135 of Electricity



W.P. No. 26141 of 2017

WEB COPY

Act, 2003 and demand notice has been issued by the respondents.

Challenging the above demand, these Writ Petitions have been filed mainly on the ground that the energy used is less than the allotted load, at any event, the use of energy in the same buildings will not fall within the ambit of unauthorised use under Section 126 of the Electricity Act.

6. Whereas, the contention of respondents in the counter is that the supply has been given as per the approval given by Chief Electrical Inspector to Government (CEIG) and the supply has been given only for the purpose of specific floors. Therefore, any usage of electricity in other areas than those mentioned in the approved plan as per CEIG approval would amount to unauthorised use of electricity.

7. Mr.AR.L.Sundaresan, the learned senior counsel appearing for the petitioners would submit that only when the electricity is used for other premises which is other than the premises for which the electricity connection has already been given, then it should be termed as unauthorised use of electricity. Whereas, the use of electricity in the



W.P. No. 26141 of 2017

WEB COPY

same premises whether or not, the building has approved plan or not, is not a matter of concern of the electricity department, they should be concerned only with the use of electricity within the permissible load. Therefore, the main submission of the learned senior counsel appearing for the petitioners is that the “premises” as defined in Sec.2(51) of Electricity Act includes all the structures and buildings. Such being the position of law, mere extending electricity supply to the other floors in the same premises, which appears to be constructed in violation of certain building norms, the said act cannot by any stretch of imagination amount to unauthorised use of electricity. Therefore, according to the learned senior counsel, the demand notices are liable to be set aside.

8. The learned counsel appearing for other Writ Petitioners also reiterated the submissions made by the learned senior counsel and also submitted that the usage of electricity is well within the permissible load to the respective connection. Therefore, there cannot be any demand under Section 126 of Electricity Act, 2003 for unauthorised usage of electricity. Therefore, the impugned demand cannot be legally sustained.



W.P. No. 26141 of 2017

WEB COPY

9. The learned counsel appearing for petitioner in W.P. No.27883 of 2017 further submitted that the violation in the building has been subsequently regularised and approved. Therefore, his contention is that as his building has been approved later, the question of unauthorised usage of electricity does not arise at all.

10. So far as Writ Petition in W.P.No.775 of 2018 is concerned, the learned counsel appearing for petitioner would submit that the additional construction was made and that the permission has already been granted to the additional two floors. However, now demand notice has been issued calculating the additional floors also. If such being the case, then the petitioner can very well raise the same before the concerned authority and if the petitioners contention stands proved, then the respondents can very well reconsider the demand.

11. Whereas, the learned Additional Advocate General appearing for the respondent electricity corporation would submit that the



W.P. No. 26141 of 2017

WEB COPY

electricity supply has been provided to the specific point as per the CEIG approval and if the same is used in areas other than the approved area, then it will certainly fall under the category of unauthorised use. The Writ Petitioners have not disputed the alleged violation in the building and use of electricity. Therefore, merely because the load is below than the approved one, the same is not a criteria to hold that the electricity service connection extended beyond the area where the service connection, has been originally granted also gets approved automatically. Hence, it is his contention that the Writ Petitioner cannot question the demand raised by the respondent electricity corporation and seeks for dismissal of all the writ petitions.

12. I have heard the learned counsel on either side and also perused the records carefully.

13. The short question involved in all these Writ Petitions is as to whether the usage of electricity by the Writ Petitioners for other floors, which are said to have been constructed against the building norms and without any plan approval obtained from the competent authority, will



W.P. No. 26141 of 2017

WEB COPY

amount to unauthorised usage of electricity.

14. On perusal of entire records, it is not in dispute that the Writ Petitioners have violated the building plan as narrated in the earlier part of this order. The violations made by each Writ Petitioner is apparent on record and the same is also not disputed by the writ petitioners. But their only submission is that the connection has been given to the premises and mere extension of supply to other area within the same premises will not amount to unauthorised usage of electricity.

15. In the light of the above submissions, it is relevant to extract the definition of the term “premises” as defined under Section 2(51) of Electricity Act, 2003. Section 2(51) reads as follows :-

“Section 2(51). “premises” includes any land, building or structure”

On perusal of the above definition, it is only an inclusive definition. Further, the definition of the term 'consumer' as defined in Section 2(15) of the Act reads as follows :-



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W.P. No. 26141 of 2017

“Section 2(15) “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”

16. Perusal of the above definition makes it clear that the term "consumer" means a person, who has been supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of licensee, the Government or such other person, as the case may be.



W.P. No. 26141 of 2017

WEB COPY

17. It is apparent from the above definition that the term "consumer" includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of licensee. Therefore, it is very clear that at the time of supplying electricity connection, the connection could be given by the licensee only for the works certified and not for any other place.

18. Section 43 of Electricity Act, 2003 deals with Duty to supply on request and the same reads as follows :-

“43. Duty to supply on request - (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of application requiring such supply.

Provided that where such supply requires



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W.P. No. 26141 of 2017

extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :



WEB COPY



W.P. No. 26141 of 2017

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

19. Perusal of the above provision makes it clear that on an application made by the owner or occupier of any premises, the licensee shall give supply of electricity to such premises within one month after receipt of the application requiring such supply. The proviso to Section 43 makes it clear that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period



W.P. No. 26141 of 2017

as may be specified by the Appropriate Commission. Therefore, even as per Section 43 of Electricity Act, the supply of electricity has to be done after the certificate issued by CEIG to the area approved by them.

20. Section 53 of the Electricity Act, deals with the provisions relating to safety and electricity supply. Section 53 of the Electricity Act reads as follows:

"Section 53. (Provisions relating to safety and electricity supply): The Authority may in consultation with the State Government, specify suitable measures for –

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of



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W.P. No. 26141 of 2017

such property ;

(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;

(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;

(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;

(f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;

(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use."



W.P. No. 26141 of 2017

WEB COPY

Thus, Section 53 of the Electricity Act makes it clear that for the supply of electricity to be given, there must be a map or plan duly approved by the licensee.

21. Further, Explanation (b) of Section 126 of the Electricity Act, explains unauthorised use of electricity, which reads as follows:

*"(b) "unauthorised use of electricity"
means the usage of electricity –
(i) by any artificial means; or
(ii) by a means not authorised by the
concerned person or authority or licensee; or
(iii) through a tampered meter; or
(iv) for the purpose other than for
which the usage of electricity was
authorised; or
(v) for the premises or areas other than
those for which the supply of electricity was
authorized."*



W.P. No. 26141 of 2017

WEB COPY

22. Therefore, a combined reading of the above Sections and provision of law in respect of any usage of electricity in other places, which are not approved by the Chief Electrical Inspector at the time of supply, certainly will fall within the ambit of unauthorised use.

23. Perusal of the typed set of papers produced by the learned Additional Advocate General appearing for the respondents, the application in one case given for supply of electricity has been taken note of and the same is sufficient for new connection in respect of all other buildings as they are one and the same. The approval accorded under Regulation 43 (4) of Central Electricity Authority Regulations, 2010 to commission the Electrical Installations is carefully perused. Each floors have been given specifications and nature of points to be installed at the time of providing electricity connection. When the electricity connection has been provided only to the specific area and supply has been granted, the usage of electricity supply granted in accordance with the sanctioned



W.P. No. 26141 of 2017

approval and any usage of electricity other than the area approved by the CEIG, this Court is of the view that certainly it would fall within the ambit of unauthorised usage of electricity.

24. On perusal of alleged violation by the Writ Petitioners, several floors have been constructed without any valid sanction from the competent authority and usage of electricity as well as the electricity supply was extended for the area, which has not been sanctioned by the licensee at the time of providing supply of electricity to the building. What was provided is only in respect of the building sanctioned at the relevant point of time and not for the subsequent structures put up in violation of relevant laws governing the field.

25. Such view of the matter, this Court is of the view that usage of electricity to the area other than the area where the service connection is originally granted would certainly fall within the ambit of Clause (v) of Explanation to Section 126 of the Electricity Act. Therefore, the demand raised by the respondents cannot be found fault with.



W.P. No. 26141 of 2017

WEB COPY

26. The contention of the Writ Petitioners in W.P. Nos. 26144 and 26693 of 2017 is that the building has been subsequently regularised. Therefore, this Court is of the view that merely because the building has been regularised at a later point of time, that will not regularise the supply to the specified area automatically and accordingly the petitions are liable to be dismissed. Such view of the matter, this Court does not find any merit in these Writ Petitions. Accordingly, these Writ Petitions are liable to be dismissed.

27. At this stage, the learned Additional Advocate General would submit that whenever there is usage of electricity in the area other than the approved area and other than sanction accorded by the Chief Electrical Inspector, the respondent electricity corporation is entitled to take action and the said plea was opposed by the learned senior counsel appearing for the petitioners. It is needless to say that whenever it is found that there is unauthorised use of electricity, then it is well open for the respondent to act as per law to take action.



WEB COPY



W.P. No. 26141 of 2017

28. With the above observation, all the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.11.2022

Index: Yes/No
Internet: Yes/No
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To

- 1 The Chairman and Managing Director,
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Operation Circle/North/Chennai,
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WEB COPY



W.P. No. 26141 of 2017

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rpp

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WEB COPY



W.P. No. 26141 of 2017

25.11.2022